under Regulation XXIX of 1827 and the recent Acts, or, if he had a remedy, it was barred by limitation before the institution of the present suit.

1886.

SHIVRÁM DINKAR GHÁRPURAY v. THE SECRETARY OF STATE FOR INDIA.

We, therefore, confirm the decree of the Court below with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nánábhái Haridás.

HARI SADA'SHIV, (ORIGINAL DEFENDANT), APPELLANT, v. SHAIK AJMUDIN, (ORIGINAL PLAINTIFF), RESPONDENT.*

1886. *August* 19.

Inám—Resumption of inám village and regrant, effect of—Acts of State—Wáikars, status of—Treaties of 1820—*Effect of grant of inám under construction—Attachment by Government of such village limited to what.*

From the year 1820 down to the year 1872 the Wáikar family had been in the enjoyment of the village of Pasarni under a treaty between the East India Company and one Shaik Mira. Abdul Kádar and Khán Mahomed were brothers and the last male descendants of Shaik Mira. For an alleged fraud of Khán Mahomed, Government restricted the enjoyment of the said village to his life-time only. Abdul predeceased Khán Mahomed. On the death of Khán Mahomed, Government, on the 31st December, 1872, placed an attachment over the village. On the 13th July, 1874, a judgment-creditor of Abdul caused the lands in dispute, which were *mirási* lands of the Wáikar family situated at Pasarni, to be sold in execution of his decree against Abdul, and they were purchased by the defendant, who was put in possession on the 22nd April, 1876. In the meanwhile, Government, having chosen to recognize the plaintiff as a representative of the Wáikar family, had removed the attachment, and regranted the village to the plaintiff shortly before, *viz.*, on the 3rd April, 1876. The plaintiff being dispossessed, sued the defendant, contending *(inter alia)* that Abdul, having predeceased his brother, had no interest in the lands, which had been purchased by the defendant. The Court of first instance awarded the plaintiff's claim, and directed the defendant to pay the plaintiff's costs. The defendant appealed to the District Judge, who was of opinion that the proceedings of Government since the attachment in 1872 and restoration of the village were acts of State, and he varied the decree of the lower Court by cutting down the plaintiff's costs, made payable by the lower Court's decree, to half. On appeal by the defendant to the High Court,

Held, reversing the decree of the lower Appellate Court, that the plaintiff's claim should be dismissed. The attachment placed by Government on the death of Khán Mahomed in December, 1872, was limited to an exemption from assessment, and the resumption and regrant to the plaintiff did not give the plaintiff any title to the lands in question. The proceedings of Government in 1873 and 1876,

* Appeal, No. 278 of 1884.

1886.

HARI SADÁSHIV v. SHAIK AJMUDIN.

by which the plaintiff was recognised as the representative of the Wáikar family, were not acts of State. The *status* of the Wáikars and other persons, with whom the agreements of 1820 were entered into, was not that of an independent sovereign. They (the Wáikars) were merely powerful *saranjámdárs* subordinate to the Rája of Sátára, and after the annexation of the territory of the Rája in 1849 they held their lands under the East India Company.

The Secretary of State for India in Council v. *Náráyan Balvant Bhosle* (1) referred to and distinguished.

THIS was a second appeal from the decision of W. H. Crowe, District Judge of Sátára.

The lands in dispute formed part of the village of Pasarni, in the Sátára District, restored, in 1820, to one Shaik Mira Wáikar, along with other *jághirs, ináms* and *vatans*, under a treaty between him and the East India Company.

The fifth clause of that treaty was as follows :—

"Whatever *inám* villages, *vatans*, and other allowances have hitherto belonged to Shaik Mira Wáikar, within the territories of the British Government or of His Highness (the Rája of Sátára), shall be continued, and whatever items of revenue belonging to His Highness' Government may be within the *jághir* shall be continued to be paid. All *dumála* villages and land, *varshásan, dharmádái, devasthán, rezimdár, khyrát, nemnuk, daruk*, &c., within the *jághir* must be continued as they are at present. All persons having possession on Government deeds are not to be interfered with, &c."

The said property devolved by succession upon Abdul Kádar and Khán Mahomed, who were brothers and co-owners of it. For an alleged fraud of Khán Mahomed the Government limited the enjoyment of the property to his life-time, and cut off his lineal descendants from succession. Abdul Kádar predeceased Khán Mahomed, who died on the 31st December, 1872. Upon the death of Khán Mahomed, Government placed an attachment upon the property. Subsequently the Government recognized the plaintiff as the legal representative of the Wáikar family, removed the attachment, and restored the property to him, and put the plaintiff's administrators in possession on the 3rd April, 1876. This action was approved of, by the Home Government.

(1) Printed Judgments for 1883, p. 244.

During the pendency of the attachment, a judgment creditor of Abdul Kádar caused the lands in dispute to be att ached and sold in execution of his decree against Abdul Kád ar. The defendant purchased them on the 13th July, 1874, and was put in possession on the 22nd April, 1876.

The plaintiff, being dispossessed by the defendant, brought the present suit to establish his right to the lands, alleging that they belonged to him and not to Abdul Kádar, who having predeceased Khán Mahomed had no interest therein, and that Government having restored the same to him, and put him in possession, he was wrongfully dispossessed by the defendant. The plaintiff prayed that the property might be restored to him, and mesne profits awarded.

The defendant contended *(inter alia)* that the property had belonged to Abdul Kádar.

The Court of first instance awarded the plaintiff's claim, and ordered the defendant to pay the whole costs of the plaintiff. On appeal, the District Judge varied the lower Court's decree as to the costs, with the following remarks:—" * * * * * It is not competent to this Court to inquire into the act of Government in recognizing the present plaintiff as the representative, as such act was an act of State—*The Secretary of State for India in Council* v. *Náráyan Balvant Bhosle* (1). No other *sanad* or title-deed for this property, other than the treaty of 1820, is stated to exist * * * * * * There is no doubt that great laxity has been shown in the conduct of the plaintiff's case * * * * * . I think it will be fair to make the plaintiff pay one-half of his own costs, and I amend the decree of the lower Court to that extent * * * *."

Macpherson (*Shámráv Vithal* with him) for the appellant:—The village of Pasarni was a private *inám* of the Wáikar family, and, as such, was not resumable. The attachment by Government was not an act of State, as held by the District Judge. The grant, under exhibit 53, gives the village to the grantee from generation to generation, and it was not resumable by Government. A vil-

(1) Printed Judgments for 1883, p. 244.

1886.

HARI SADÁSHIV v. SHAIK AJMUDIN.

lage which has once been granted as *inám* cannot be otherwise, because it has been resumed by the British Government—*Mills, Collector of Kaira,* v. *Modee Pestonjee Khoorshedjee*[1]. It was private property, and the British Government were not justified in resuming it. The right of the Government was only as regards exemption from assessment.

Latham, Advocate General (*Leith* and *Shántárám Naráyan* with him) for the respondents :—The tenure of *jághirdárs* did not exist in Sátára prior to British rule. Since then the Wáikars were regarded as holding under a political tenure, and, as such, their *inám* property was incapable of being alienated under the Act XI of 1852 and Act II of 1863, section 16 of which defines a political tenure as "tenure created from or dependent upon political considerations, the existence of which shall be determined by the Government." The meaning of the terms 'resume', 'regrant', or 'continue' is the same. This was a mixed estate of *saranjám* and *inám* held under the treaty of 1818 (*vide* Government Resolution). Government reframed that resolution in February, 1884: see Aitchison's Treaties, p. 340. Government had right to resume it, the grant being from the British Government. The Government has power to resume, and its decision is final—*Jamál Sáheb* v. *Murgaya Swámi*[2]; *The East India Company* v. *Syed Ally*[3].

SARGENT, C.J. :—The facts of the case are so fully set out in the judgment of the District Judge that we think it unnecessary to refer more particularly to them than is required to explain the view we take of the case. The District Judge has held, but we think wrongly, that the proceedings of Government in 1873 and 1876, by which the plaintiff was recognized as the representative of the Wáikar family, and the whole estate, *saranjám* and *inám*, was directed to be continued to the plaintiff as such representative, were acts of State.

In *The Secretary of State for India in Council* v. *Náráyan Balvant Bhosle*[4], the case relied on by the District Judge, the

(1) 2 Moore's Ind. Ap., 37.
(2) I. L. R., 10 Bom., 34.
(3) 7 Moore's Ind. Ap., 555.
(4) Printed Judgments for 1883, p. 244.

Government were dealing with the Rája of Sátára, who was an independent sovereign. But the *status* of the Wáikars and other persons, with whom the agreements of 1820 were entered into, was far different: they were merely powerful *saranjámdárs* subordinate to the Rája of Sátára, and who, after the annexation of the territory of the Rája in 1849, held their lands under the East India Company. Their position was very similar to that of the Begum Sumroo after the cession of the Doab by Dowlut Ráo Scindia in 1803, as to whom the Privy Council held that the resumption by the East India Company of her *jághírs* was not an act of State, but the resumption of *jághírs* previously held from the Government under the treaty agreement with her in 1805.

However, it has been contended that, in any case, the Wáikar family must be deemed to have held the *inám* in question under the treaty agreement of 3rd July, 1820, on political tenure so as to bring it within the contemplation of clauses 2 and 3 of section 2 of Bombay Act VII of 1863, and, therefore, "resumable and continuable in such manner and on such terms as Government might from time to time see fit to determine." In the view we take of the effect of the action of Government in 1876, it is not necessary to decide the question raised by the above contention; nor would it be convenient to express an opinion on it in the absence of Government. Assuming the validity of the action of Government, the question still remains as to the effect of the resumption and regrant to the plaintiff. Now the Acts XI of 1852 and VII of 1863 (Bombay) are in *pari materia*, and the term "resumption of lands" (unless there be something in the context to show the contrary) must receive the same construction throughout. On the 27th May, 1854, the Government passed a resolution explaining the effect of resumption in its legal sense and as understood by Government. The resolution says: "All that the law allows as regards resumption is the discontinuance of exemption from payment of the Government revenue, leaving the *inámdár*, who is in the occupation of the land, to retain the land so long as he pays the assessment imposable on the land as *khalvat* land according to the revenue survey settlement, or, in districts which have not been subject to the oper-

1886.

HARI SADÁSHIV *v.* SHAIK AJMUDIN.

ations of a survey, according to the rates obtainable in the village in which the land is situated." We may also refer on this part of the case to the decision of Sausse, C.J., in *Vishnu Trimbak* v. *Tatia* (1) and of this Court in *Ganpatráo Trimbak* v. *Ganesh Báji*(2) as establishing that the effect of resumption under the above Acts is to leave the right to the land in the possession of the *inámdár* untouched. The attachment placed by the Government on the village on the *inám* and *saranjám* property on the death of Mahomed Khán in December, 1872, must, therefore, be regarded as limited to the asssessment.

In the present case the plaintiff seeks to recoyer possession of land described by him in his plaint as *mirási* land belonging to the Wáikar family, on the ground that on the death of Khán Mahomed it was attached by Government and ultimately granted to him in 1876. The above remarks show that such resumption and regrant to the plaintiff afford no ground of title to the land in question.

In the enquiry before the Subordinate Judge, under section 269 of the Code of Civil Procedure, directed by the late Chief Justice and Mr. Justice Melvill by the order of 11th July, 1877, the plaintiff's claim in respect of heirship, whether of Abdul Kádar or Mahomed Khán, was considered and disallowed. In the present suit, as appears from the plaint, the plaintiff bases his title exclusively on the grant from Government; and that it was so regarded, is shown by the order of this Court, dated 6th September, 1882, remanding the case (on appeal from Mr. Mactier's decree of 22nd July, 1881,) for the District Judge "to decide whether the plaintiff has proved that, at the date of the sale to the defendant, Hari Sadáshiv, the land in dispute had been resumed and regranted to him by Government, and was consequently his property, and not liable to be sold in execution of Krishnáji's decree against Abdul Kádar." This has now been decided against the plaintiff contrary to the finding of the District Judge. We must, therefore, reverse the decree, and dismiss the plaintiff's claim, with costs throughout.

Decree reversed.

(1) 1 Bom. H. C. Rep., p. 22. (2) I. L. R, 10 Bom., 112.